



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0568/R  
GMM:sbb&jld:ph

IN 1113

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Wanted 1/20

X

Repeal

1 AN ACT *to amend* 48.20 (8) (b), 48.203 (7), 48.21 (3) (b), 48.213 (2) (c), 48.213 (2)

2 (d), 48.245 (3), 48.245 (8), 48.255 (4), 48.27 (3) (a) 1., 48.27 (3) (c), 48.29 (1),

3 48.293 (2), 48.293 (3), 48.297 (6), 48.299 (1) (a), 48.30 (2), 48.31 (2), 48.315 (1)

4 (b), 48.32 (1) (a), 48.32 (2) (c), 48.355 (2) (b) 1m., 48.355 (2) (d), 48.357 (1) (am)

5 1., 48.357 (1) (am) 2. b., 48.357 (1) (am) 2. c., 48.357 (2m) (a), 48.357 (2m) (b),

6 48.363 (1) (a), 48.363 (1) (b), 48.365 (1m), 48.365 (2), 48.396 (1b), 48.396 (1d),

7 48.396 (2) (aj), 48.396 (2) (ap), 48.396 (5) (b), 48.46 (1), 48.78 (2) (aj) and 48.78

8 (2) (ap); and *to repeal and recreate* 48.27 (3) (a) 1., 48.357 (1) (am) 1., 48.357

9 (2m) (b), 48.363 (1) (b) and 48.365 (2) of the statutes; **relating to:** the provision

10 of notices to, and the exercise of rights by, an unborn child's guardian ad litem

11 in unborn child in need of protection or services proceedings (suggested as

12 remedial legislation by the Department of Children and Families).

**Analysis by the Legislative Reference Bureau**

Under current law, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) has exclusive original jurisdiction over an unborn

child who is alleged to be in need of protection or services on the grounds that the unborn child's expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control (commonly referred to as a "UCHIPS proceeding").

In a UCHIPS proceeding, the unborn child, by or through the unborn child's guardian ad litem (GAL), is entitled to receive notice of all hearings involving the unborn child, including specifically hearings involving the temporary physical custody and changes in placement of the expectant mother and revisions to or extensions of the dispositional order. The unborn child, by or through the unborn child's GAL, is also entitled to exercise certain rights as a party to the proceeding, including the right to request a substitution of judge, to inspect records relevant to the proceeding, to demand a public fact-finding hearing or a jury trial, or to request a change in placement or revision or extension of the dispositional order. In addition, an unborn child, by or through the unborn child's GAL, may request or authorize the disclosure of law enforcement, juvenile court, or social services records relating to the expectant mother of the unborn child.

This bill eliminates the provision of those notices to, and the exercise of those rights by, an unborn child, by or through the unborn child's GAL. Rather, the bill requires those notices to be provided to, and permits those rights to be exercised by, the unborn child's GAL.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Children and Families and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 48.20 (8) (b) of the statutes is amended to read:

2 48.20 (8) (b) If the child is an expectant mother who has been taken into custody  
3 under s. 48.19 (1) (cm) or (d) 8., ~~the unborn child, through~~ the unborn child's guardian  
4 ad litem, shall receive the same notice about the whereabouts of the child expectant  
5 mother, about the reasons for holding the child expectant mother in custody, and  
6 about the detention hearing as the child expectant mother and her parent, guardian,

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1 legal custodian, or Indian custodian. The intake worker shall notify the child  
2 expectant mother, her parent, guardian, legal custodian, or Indian custodian, and  
3 ~~the unborn child, by the unborn child's guardian ad litem.~~

4 **SECTION 2.** 48.203 (7) of the statutes is amended to read:

5 48.203 (7) If an adult expectant mother is held in custody, the intake worker  
6 shall notify the adult expectant mother and ~~the unborn child, through~~ the unborn  
7 child's guardian ad litem, of the reasons for holding the adult expectant mother in  
8 custody, the time and place of the detention hearing required under s. 48.213, the  
9 nature and possible consequences of that hearing, and the right to present and  
10 cross-examine witnesses at the hearing.

11 **SECTION 3.** 48.21 (3) (b) of the statutes is amended to read:

12 48.21 (3) (b) If present at the hearing, a copy of the petition or request shall be  
13 given to the parent, guardian, legal custodian, or Indian custodian, and to the child  
14 if he or she is 12 years of age or older, before the hearing begins. If the child is an  
15 expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8.,  
16 a copy of the petition shall also be given to ~~the unborn child, through~~ the unborn  
17 child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall  
18 be given to the child's parent, guardian, legal custodian, and Indian custodian, to the  
19 child if he or she is 12 years of age or older and, if the child is an expectant mother  
20 who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., ~~to the unborn child,~~  
21 ~~through~~ the unborn child's guardian ad litem, under s. 48.20 (8).

22 **SECTION 4.** 48.213 (2) (c) of the statutes is amended to read:

23 48.213 (2) (c) A copy of the petition shall be given to the adult expectant mother,  
24 and to ~~the unborn child, through~~ the unborn child's guardian ad litem, before the

**SECTION 4**

1 hearing begins. Prior notice of the hearing shall be given to the adult expectant  
2 mother and unborn ~~child~~ child's guardian ad litem in accordance with s. 48.203 (7).

3 **SECTION 5.** 48.213 (2) (d) of the statutes is amended to read:

4 48.213 (2) (d) Prior to the commencement of the hearing, the adult expectant  
5 mother and ~~the unborn child, through~~ the unborn child's guardian ad litem, shall be  
6 informed by the court of the allegations that have been made or may be made, the  
7 nature and possible consequences of this hearing as compared to possible future  
8 hearings, the right to confront and cross-examine witnesses, and the right to present  
9 witnesses.

10 **SECTION 6.** 48.245 (3) of the statutes is amended to read:

11 48.245 (3) The obligations imposed under an informal disposition and its  
12 effective date shall be set forth in writing. The child and a parent, guardian, and  
13 legal custodian,; the child expectant mother, her parent, guardian, and legal  
14 custodian, and ~~the unborn child~~ by the unborn child's guardian ad litem,; or the adult  
15 expectant mother and ~~the unborn child~~ by the unborn child's guardian ad litem, shall  
16 receive a copy, as shall any agency providing services under the agreement.

17 **SECTION 7.** 48.245 (8) of the statutes is amended to read:

18 48.245 (8) If the obligations imposed under the informal disposition are met,  
19 the intake worker shall so inform the child and a parent, guardian, and legal  
20 custodian,; the child expectant mother, her parent, guardian, and legal custodian,  
21 and ~~the unborn child~~ by the unborn child's guardian ad litem,; or the adult expectant  
22 mother and ~~the unborn child~~ by the unborn child's guardian ad litem, in writing, and  
23 no petition may be filed on the charges that brought about the informal disposition  
24 nor may the charges be the sole basis for a petition under ss. 48.13 to 48.14.

25 **SECTION 8.** 48.255 (4) of the statutes is amended to read:

1           48.255 (4) A copy of a petition under sub. (1) shall be given to the child if the  
2 child is 12 years of age or over and to the parents, guardian, legal custodian, and  
3 physical custodian. A copy of a petition under sub. (1m) shall be given to the child  
4 expectant mother, if 12 years of age or over, her parents, guardian, legal custodian,  
5 and physical custodian, and ~~the unborn child by the unborn child's guardian ad litem~~  
6 or to the adult expectant mother, ~~the unborn child through~~ the unborn child's  
7 guardian ad litem, and the physical custodian of the expectant mother, if any. If the  
8 child is an Indian child who has been removed from the home of his or her parent or  
9 Indian custodian or the unborn child will be an Indian child when born, a copy of a  
10 petition under sub. (1) or (1m) shall also be given to the Indian child's Indian  
11 custodian and tribe or the Indian tribe with which the unborn child may be eligible  
12 for affiliation when born.

13           ~~SECTION 9. 48.27 (3) (a) 1. of the statutes is amended to read:~~

14           48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a  
15 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother  
16 who is a child, the court shall notify, under s. 48.273, the child, any parent, guardian,  
17 and legal custodian of the child, any foster parent, treatment foster parent, or other  
18 physical custodian described in s. 48.62 (2) of the child, ~~the unborn child by the~~  
19 ~~unborn child's guardian ad litem, if applicable, and any person specified in par. (b),~~  
20 ~~(d), or (e), if applicable, of all hearings involving the child except hearings on motions~~  
21 ~~for which notice must be provided only to the child and his or her counsel and, if~~  
22 ~~applicable, to the unborn child's guardian ad litem.~~ If parents who are entitled to  
23 notice have the same place of residence, notice to one constitutes notice to the other.  
24 The first notice to any interested party, foster parent, treatment foster parent, or  
25 other physical custodian described in s. 48.62 (2) shall be in writing and may have

1 a copy of the petition attached to it. Notices of subsequent hearings may be given by  
 2 telephone at least 72 hours before the time of the hearing. The person giving  
 3 telephone notice shall place in the case file a signed statement of the time notice was  
 4 given and the person to whom he or she spoke.

13 amended

5) Fix → SECTION 10. 48.27 (3) (a) 1. of the statutes as affected by 2009 Wisconsin Act  
 6) component  
 94, section 47, and 2011 Wisconsin Act 1. (This act) is repealed and recreated to read:

7 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a  
 8 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother  
 9 who is a child, the court shall notify, under s. 48.273, the child, any parent, guardian,  
 10 and legal custodian of the child, any foster parent or other physical custodian  
 11 described in s. 48.62 (2) of the child, ~~the unborn child by~~ ← STRIKE the unborn child's guardian ad litem, if  
 12 applicable, and any person specified in par. (b), (d), or (e), if applicable, of all hearings  
 13 involving the child except hearings on motions for which notice must be provided  
 14 only to the child and his or her counsel and, if applicable, to the unborn child's ← underscore  
 15 guardian ad litem. If parents who are entitled to notice have the same place of  
 16 residence, notice to one constitutes notice to the other. The first notice to any  
 17 interested party, foster parent, or other physical custodian described in s. 48.62 (2)  
 18 shall be in writing and may have a copy of the petition attached to it. Notices of  
 19 subsequent hearings may be given by telephone at least 72 hours before the time of  
 20 the hearing. The person giving telephone notice shall place in the case file a signed  
 21 statement of the time notice was given and the person to whom he or she spoke.

22 SECTION 11. 48.27 (3) (c) of the statutes is amended to read:

23 48.27 (3) (c) If the petition that was filed relates to facts concerning a situation  
 24 under s. 48.133 involving an expectant mother who is an adult, the court shall notify,  
 25 under s. 48.273, ~~the unborn child by~~ the unborn child's guardian ad litem, the

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1 expectant mother, the physical custodian of the expectant mother, if any, and any  
2 person specified in par. (d), if applicable, of all hearings involving the unborn child  
3 and expectant mother except hearings on motions for which notice need only be  
4 provided to the expectant mother and her counsel and ~~the unborn child through the~~  
5 unborn child's guardian ad litem. The first notice to any interested party shall be  
6 written and may have a copy of the petition attached to it. Thereafter, notice of  
7 hearings may be given by telephone at least 72 hours before the time of the hearing.  
8 The person giving telephone notice shall place in the case file a signed statement of  
9 the time notice was given and the person to whom he or she spoke.

10 **SECTION 12.** 48.29 (1) of the statutes is amended to read:

11 48.29 (1) The child, the child's parent, guardian or legal custodian, the  
12 expectant mother, or ~~the unborn child~~ by the unborn child's guardian ad litem, either  
13 before or during the plea hearing, may file a written request with the clerk of the  
14 court or other person acting as the clerk for a substitution of the judge assigned to  
15 the proceeding. Upon filing the written request, the filing party shall immediately  
16 mail or deliver a copy of the request to the judge named in the request. When any  
17 person has the right to request a substitution of judge, that person's counsel or  
18 guardian ad litem may file the request. Not more than one such written request may  
19 be filed in any one proceeding, nor may any single request name more than one judge.  
20 This section does not apply to proceedings under s. 48.21 or 48.213.

21 **SECTION 13.** 48.293 (2) of the statutes is amended to read:

22 48.293 (2) All records relating to a child, or to an unborn child and the unborn  
23 child's expectant mother, ~~which~~ that are relevant to the subject matter of a  
24 proceeding under this chapter shall be open to inspection by a guardian ad litem or  
25 counsel for any party and to inspection by the court-appointed special advocate for

1 the child, upon demand and upon presentation of releases when necessary, at least  
2 48 hours before the proceeding. ~~Persons and unborn children, by their guardians ad~~  
3 ~~litem,~~ entitled to inspect the records may obtain copies of the records with the  
4 permission of the custodian of the records or with permission of the court. The court  
5 may instruct counsel, a guardian ad litem, or a court-appointed special advocate not  
6 to disclose specified items in the materials to the child or the parent, or to the  
7 expectant mother, if the court reasonably believes that the disclosure would be  
8 harmful to the interests of the child or the unborn child.

9 **SECTION 14.** 48.293 (3) of the statutes is amended to read:

10 48.293 (3) Upon request prior to the fact-finding hearing, counsel for the  
11 interests of the public shall disclose to the child, through his or her counsel or  
12 guardian ad litem, or to ~~the unborn child, through~~ the unborn child's guardian ad  
13 litem, the existence of any audiovisual recording of an oral statement of a child under  
14 s. 908.08 ~~which~~ that is within the possession, custody, or control of the state and shall  
15 make reasonable arrangements for the requesting person to view the statement. If,  
16 after compliance with this subsection, the state obtains possession, custody, or  
17 control of such a statement, counsel for the interests of the public shall promptly  
18 notify the requesting person of that fact and make reasonable arrangements for the  
19 requesting person to view the statement.

20 **SECTION 15.** 48.297 (6) of the statutes is amended to read:

21 48.297 (6) A motion required to be served on a child may be served on his or  
22 her attorney of record. ~~A motion required to be served on an unborn child may be~~  
23 ~~served on the unborn child's guardian ad litem.~~

24 **SECTION 16.** 48.299 (1) (a) of the statutes is amended to read:



1           48.299 (1) (a) The general public shall be excluded from hearings under this  
2 chapter and from hearings by courts exercising jurisdiction under s. 48.16 unless a  
3 public fact-finding hearing is demanded by a child through his or her counsel, by an  
4 expectant mother through her counsel, or by an ~~unborn child through the unborn~~  
5 ~~child's guardian ad litem.~~ However, the court shall refuse to grant the public hearing  
6 in a proceeding other than a proceeding under s. 48.375 (7), if a parent, guardian,  
7 expectant mother, or ~~unborn child through the unborn~~ child's guardian ad litem  
8 objects.

9           **SECTION 17.** 48.30 (2) of the statutes is amended to read:

10           48.30 (2) At the commencement of the hearing under this section the child and  
11 the parent, guardian, legal custodian, or Indian custodian; the child expectant  
12 mother, her parent, guardian, legal custodian, or Indian custodian, and ~~the unborn~~  
13 ~~child through~~ the unborn child's guardian ad litem; or the adult expectant mother  
14 and ~~the unborn child through~~ the unborn child's guardian ad litem; shall be advised  
15 of ~~their~~ the rights as specified in s. 48.243 and shall be informed that a request for  
16 a jury trial or for a substitution of judge under s. 48.29 must be made before the end  
17 of the plea hearing or is waived. Nonpetitioning parties, including the child, shall  
18 be granted a continuance of the plea hearing if they wish to consult with an attorney  
19 on the request for a jury trial or substitution of a judge.

20           **SECTION 18.** 48.31 (2) of the statutes is amended to read:

21           48.31 (2) The hearing shall be to the court unless the child, the child's parent,  
22 guardian, or legal custodian, ~~the unborn child by~~ the unborn child's guardian ad  
23 litem, or the expectant mother of the unborn child exercises the right to a jury trial  
24 by demanding a jury trial at any time before or during the plea hearing. If a jury trial  
25 is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6

1 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall  
2 consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and  
3 805 shall govern the selection of jurors. If the hearing involves a child victim or  
4 witness, as defined in s. 950.02, the court may order that a deposition be taken by  
5 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to  
6 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion  
7 of the hearing, the court or jury shall make a determination of the facts, except that  
8 in a case alleging a child or an unborn child to be in need of protection or services  
9 under s. 48.13 or 48.133, the court shall make the determination under s. 48.13  
10 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection  
11 or services that can be ordered by the court. If the court finds that the child or unborn  
12 child is not within the jurisdiction of the court or, in a case alleging a child or an  
13 unborn child to be in need of protection or services under s. 48.13 or 48.133, that the  
14 child or unborn child is not in need of protection or services that can be ordered by  
15 the court or if the court or jury finds that the facts alleged in the petition have not  
16 been proved, the court shall dismiss the petition with prejudice.

17 **SECTION 19.** 48.315 (1) (b) of the statutes is amended to read:

18 48.315 (1) (b) Any period of delay resulting from a continuance granted at the  
19 request of or with the consent of the child and his or her counsel or of ~~the unborn child~~  
20 by the unborn child's guardian ad litem.

21 **SECTION 20.** 48.32 (1) (a) of the statutes is amended to read:

22 48.32 (1) (a) At any time after the filing of a petition for a proceeding relating  
23 to s. 48.13 or 48.133 and before the entry of judgment, the judge or a circuit court  
24 commissioner may suspend the proceedings and place the child or expectant mother  
25 under supervision in the home or present placement of the child or expectant mother.

1 The court may establish terms and conditions applicable to the child and the child's  
2 parent, guardian, or legal custodian, to the child expectant mother and her parent,  
3 guardian or legal custodian, or to the adult expectant mother, including the condition  
4 specified in sub. (1b). The order under this section shall be known as a consent decree  
5 and must be agreed to by the child if 12 years of age or older, the parent, guardian,  
6 or legal custodian, and the person filing the petition under s. 48.25; by the child  
7 expectant mother, her parent, guardian, or legal custodian, ~~the unborn child by the~~  
8 ~~unborn child's guardian ad litem,~~ and the person filing the petition under s. 48.25;  
9 or by the adult expectant mother, ~~the unborn child by the unborn child's guardian~~  
10 ~~ad litem,~~ and the person filing the petition under s. 48.25. The consent decree shall  
11 be reduced to writing and given to the parties.

12 **SECTION 21.** 48.32 (2) (c) of the statutes is amended to read:

13 48.32 (2) (c) Upon the motion of the court or the application of the child, parent,  
14 guardian, legal custodian, expectant mother, ~~unborn child by the~~ unborn child's  
15 guardian ad litem, intake worker, or any agency supervising the child or expectant  
16 mother under the consent decree, the court may, after giving notice to the parties to  
17 the consent decree, their counsel or guardian ad litem, and the court-appointed  
18 special advocate for the child, if any, extend the decree for up to an additional 6  
19 months in the absence of objection to extension by the parties to the initial consent  
20 decree. If the child, parent, guardian, legal custodian, expectant mother or ~~unborn~~  
21 ~~child by the~~ unborn child's guardian ad litem objects to the extension, the judge shall  
22 schedule a hearing and make a determination on the issue of extension. An  
23 extension under this paragraph of a consent decree relating to an unborn child who  
24 is alleged to be in need of protection or services may be granted after the child is born.

25 **SECTION 22.** 48.355 (2) (b) 1m. of the statutes is amended to read:

1           48.355 (2) (b) 1m. A notice that the child's parent, guardian, or legal custodian,  
2 the child, if 14 years of age or over, the expectant mother, if 14 years of age or over,  
3 ~~or the unborn child by the unborn child's guardian ad litem~~ may request an agency  
4 that is providing care or services for the child or expectant mother or that has legal  
5 custody of the child to disclose to, or make available for inspection by, the parent,  
6 guardian, legal custodian, child, expectant mother, or ~~unborn child by the unborn~~  
7 ~~child's guardian ad litem~~ the contents of any record kept or information received by  
8 the agency about the child or expectant mother as provided in s. 48.78 (2) (ag) and  
9 (aj).

10           **SECTION 23.** 48.355 (2) (d) of the statutes is amended to read:

11           48.355 (2) (d) The court shall provide a copy of a dispositional order relating  
12 to a child in need of protection or services to the child's parent, guardian, legal  
13 custodian, or trustee, to the child through the child's counsel or guardian ad litem,  
14 to the child's court-appointed special advocate, and, if the child is an Indian child  
15 who has been removed from the home of his or her parent or Indian custodian and  
16 placed outside that home, to the Indian child's Indian custodian and tribe. The court  
17 shall provide a copy of a dispositional order relating to an unborn child in need of  
18 protection or services to the expectant mother, to ~~the unborn child through the~~  
19 ~~unborn child's guardian ad litem~~, to the parent, guardian, legal custodian, or trustee  
20 of a child expectant mother, and, if the expectant mother is an Indian child, to the  
21 expectant mother's Indian custodian and tribe.

22           **SECTION 24.** 48.357 (1) (am) 1. of the statutes is amended to read:

23           48.357 (1) (am) 1. ~~If the proposed change in placement involves any change in~~  
24 ~~placement other than a change in placement specified in par. (c), the person or agency~~  
25 ~~primarily responsible for implementing the dispositional order, the district attorney,~~

1 or the corporation counsel shall cause written notice of the proposed change in  
 2 placement to be sent to the child, the parent, guardian, and legal custodian of the  
 3 child, any foster parent, treatment foster parent, or other physical custodian  
 4 described in s. 48.62 (2) of the child, the child's court-appointed special advocate,  
 5 and, if the child is an Indian child who has been removed from the home of his or her  
 6 parent or Indian custodian, the Indian child's Indian custodian and tribe. If the child  
 7 is the expectant mother of an unborn child under s. 48.133, written notice shall also  
 8 be sent to the unborn child by the unborn child's guardian ad litem. If the change  
 9 in placement involves an adult expectant mother of an unborn child under s. 48.133,  
 10 written notice shall be sent to the adult expectant mother and the unborn child by  
 11 the unborn child's guardian ad litem. The notice shall contain the name and address  
 12 of the new placement, the reasons for the change in placement, a statement  
 13 describing why the new placement is preferable to the present placement, and a  
 14 statement of how the new placement satisfies objectives of the treatment plan  
 15 ordered by the court.

is amended

16 **Fix component** SECTION 25. 48.357 (1) (am) 1. of the statutes, as affected by 2009 Wisconsin  
 17 Act 94, section 81, and 2011 Wisconsin Act .... (this act), is repealed and recreated to

read:

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19 48.357 (1) (am) 1. If the proposed change in placement involves any change in  
 20 placement other than a change in placement specified in par. (c), the person or agency  
 21 primarily responsible for implementing the dispositional order, the district attorney,  
 22 or the corporation counsel shall cause written notice of the proposed change in  
 23 placement to be sent to the child, the parent, guardian, and legal custodian of the  
 24 child, any foster parent or other physical custodian described in s. 48.62 (2) of the  
 25 child, the child's court-appointed special advocate, and, if the child is an Indian child

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1 who has been removed from the home of his or her parent or Indian custodian, the  
 2 Indian child's Indian custodian and tribe. If the child is the expectant mother of an  
 3 unborn child under s. 48.133, written notice shall also be sent to the unborn child's  
 4 guardian ad litem. If the change in placement involves an adult expectant mother  
 5 of an unborn child under s. 48.133, written notice shall be sent to the adult expectant  
 6 mother and the unborn child's guardian ad litem. The notice shall contain the name  
 7 and address of the new placement, the reasons for the change in placement, a  
 8 statement describing why the new placement is preferable to the present placement,  
 9 and a statement of how the new placement satisfies objectives of the treatment plan  
 10 ordered by the court.

11 SECTION 26. 48.357 (1) (am) 2. b. of the statutes is amended to read:

12 48.357 (1) (am) 2. b. By the child expectant mother, if 12 years of age or over,  
 13 her parent, guardian, legal custodian, or Indian custodian, ~~the unborn child by the~~  
 14 unborn child's guardian ad litem, and the child expectant mother's tribe, if she is an  
 15 Indian child who has been removed from the home of her parent or Indian custodian.

16 SECTION 27. 48.357 (1) (am) 2. c. of the statutes is amended to read:

17 48.357 (1) (am) 2. c. By the adult expectant mother and ~~the unborn child by the~~  
 18 unborn child's guardian ad litem.

19 SECTION 28. 48.357 (2m) (a) of the statutes is amended to read:

20 48.357 (2m) (a) The child, the parent, guardian, legal custodian, or Indian  
 21 custodian of the child, the expectant mother, ~~the unborn child by the~~ unborn child's  
 22 guardian ad litem, or any person or agency primarily bound by the dispositional  
 23 order, other than the person or agency responsible for implementing the order, may  
 24 request a change in placement under this paragraph. The request shall contain the  
 25 name and address of the new placement requested and shall state what new

1 information is available that affects the advisability of the current placement. If the  
2 proposed change in placement would change the placement of a child placed in the  
3 child's home to a placement outside the child's home, the request shall also contain  
4 specific information showing that continued placement of the child in the home  
5 would be contrary to the welfare of the child and, unless any of the circumstances  
6 under s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the agency  
7 primarily responsible for implementing the dispositional order has made reasonable  
8 efforts to prevent the removal of the child from the home, while assuring that the  
9 child's health and safety are the paramount concerns. The request shall be  
10 submitted to the court. The court may also propose a change in placement on its own  
11 motion.

12 **SECTION 29.** 48.357 (2m) (b) of the statutes is amended to read:

13 48.357 (2m) (b) The court shall hold a hearing prior to ordering any change in  
14 placement requested or proposed under par. (a) if the request states that new  
15 information is available that affects the advisability of the current placement. A  
16 hearing is not required if the requested or proposed change in placement does not  
17 involve a change in placement of a child placed in the child's home to a placement  
18 outside the child's home, written waivers of objection to the proposed change in  
19 placement are signed by all persons entitled to receive notice under this paragraph,  
20 other than a court-appointed special advocate, and the court approves. If a hearing  
21 is scheduled, not less than 3 days before the hearing the court shall notify the child,  
22 the parent, guardian, and legal custodian of the child, any foster parent, treatment  
23 foster parent, or other physical custodian described in s. 48.62 (2) of the child, the  
24 child's court-appointed special advocate, all parties who are bound by the  
25 dispositional order, and, if the child is an Indian child, the Indian child's Indian

15 amended

1 custodian and tribe. If the child is the expectant mother of an unborn child under  
 2 s. 48.133, the court shall also notify ~~the unborn child by the unborn child's guardian~~  
 3 ad litem. If the change in placement involves an adult expectant mother of an unborn  
 4 child under s. 48.133, the court shall notify the adult expectant mother, ~~the unborn~~  
 5 ~~child by the unborn child's guardian ad litem, and all parties who are bound by the~~  
 6 ~~dispositional order, at least 3 days prior to the hearing. A copy of the request or~~  
 7 ~~proposal for the change in placement shall be attached to the notice. Subject to par.~~  
 8 ~~(br), if all of the parties consent, the court may proceed immediately with the hearing.~~

Fix component

9 SECTION 30. 48.357 (2m) (b) of the statutes, ~~as affected by 2009 Wisconsin Act~~  
 10 ~~94, section 92, and 2011 Wisconsin Act .... (this act), is repealed and recreated to read:~~

11 48.357 (2m) (b) The court shall hold a hearing prior to ordering any change in  
 12 placement requested or proposed under par. (a) if the request states that new  
 13 information is available that affects the advisability of the current placement. A  
 14 hearing is not required if the requested or proposed change in placement does not  
 15 involve a change in placement of a child placed in the child's home to a placement  
 16 outside the child's home, written waivers of objection to the proposed change in  
 17 placement are signed by all persons entitled to receive notice under this paragraph,  
 18 other than a court-appointed special advocate, and the court approves. If a hearing  
 19 is scheduled, not less than 3 days before the hearing the court shall notify the child,  
 20 the parent, guardian, and legal custodian of the child, any foster parent or other  
 21 physical custodian described in s. 48.62 (2) of the child, the child's court-appointed  
 22 special advocate, all parties who are bound by the dispositional order, and, if the child  
 23 is an Indian child, the Indian child's Indian custodian and tribe. If the child is the  
 24 expectant mother of an unborn child under s. 48.133, the court shall also notify the  
 25 unborn child's guardian ad litem. If the change in placement involves an adult

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expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child's guardian ad litem, and all parties who are bound by the dispositional order, at least 3 days prior to the hearing. A copy of the request or proposal for the change in placement shall be attached to the notice. Subject to par. (br), if all of the parties consent, the court may proceed immediately with the hearing.

of  
SECTION 31

SECTION 31. 48.363 (1) (a) of the statutes is amended to read:

48.363 (1) (a) A child, the child's parent, guardian, legal custodian, or Indian custodian, an expectant mother, an ~~unborn child by~~ the unborn child's guardian ad litem, any person or agency bound by a dispositional order, or the district attorney or corporation counsel in the county in which the dispositional order was entered may request a revision in the order that does not involve a change in placement, including a revision with respect to the amount of child support to be paid by a parent. The court may also propose a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the court's disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or court proposal indicates that new information is available which affects the advisability of the court's dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.

~~SECTION 32. 48.363 (1) (b) of the statutes is amended to read:  
48.363 (1) (b) If a hearing is held, at least 3 days before prior to the the hearing the court shall notify the child, the child's parent, guardian, legal custodian, and Indian custodian, all parties bound by the dispositional order, the child's foster~~

SECTION 32

g

1 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2),  
 2 the child's court-appointed special advocate, the district attorney or corporation  
 3 counsel in the county in which the dispositional order was entered, and, if the child  
 4 is an Indian child who is placed outside the home of his or her parent or Indian  
 5 custodian, the Indian child's tribe. If the child is the expectant mother of an unborn  
 6 child under s. 48.133, the court shall also notify the unborn child by the unborn  
 7 child's guardian ad litem. If the proceeding involves an adult expectant mother of  
 8 an unborn child under s. 48.133, the court shall notify the adult expectant mother,  
 9 the unborn child through the unborn child's guardian ad litem, all parties bound by  
 10 the dispositional order, and the district attorney or corporation counsel in the county  
 11 in which the dispositional order was entered, at least 3 days prior to the hearing. A  
 12 copy of the request or proposal shall be attached to the notice. If all parties consent,  
 13 the court may proceed immediately with the hearing. No revision may extend the  
 14 effective period of the original order.

13 amended

15 **Fix Component** → SECTION 33. 48.363 (1) (b) of the statutes, as affected by 2009 Wisconsin Act 94,  
 16 section 101, and 2011 Wisconsin Act ... (this act), is ~~repealed and recreated~~ to read:

17 48.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court  
 18 shall notify the child, the child's parent, guardian, legal custodian, and Indian  
 19 custodian, all parties bound by the dispositional order, the child's foster parent or  
 20 other physical custodian described in s. 48.62 (2), the child's court-appointed special  
 21 advocate, the district attorney or corporation counsel in the county in which the  
 22 dispositional order was entered, and, if the child is an Indian child who is placed  
 23 outside the home of his or her parent or Indian custodian, the Indian child's tribe.  
 24 If the child is the expectant mother of an unborn child under s. 48.133, the court shall  
 25 also notify the unborn child's guardian ad litem. If the proceeding involves an adult

RWF

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expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child's guardian ad litem, all parties bound by the dispositional order, and the district attorney or corporation counsel in the county in which the dispositional order was entered, at least 3 days prior to the hearing. A copy of the request or proposal shall be attached to the notice. If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

~~at least 3 days prior to the hearing.~~  
plain

**SECTION 34.** 48.365 (1m) of the statutes is amended to read:

48.365 (1m) The parent, child, guardian, legal custodian, Indian custodian, expectant mother, ~~unborn child~~ by the unborn child's guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered, or the court on its own motion may request an extension of an order under s. 48.355 including an order under s. 48.355 that was entered before the child was born. The request shall be submitted to the court that entered the order. An order under s. 48.355 may be extended only as provided in this section.

g

**SECTION 35.** 48.365 (2) of the statutes is amended to read:

48.365 (2) No order may be extended without a hearing. The court shall provide notice of the time and place of the hearing to the child, the child's parent, guardian, legal custodian, and Indian custodian, all the parties present at the original hearing, the child's foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child's tribe. If the child is an expectant

1 mother of an unborn child under s. 48.133, the court shall also notify ~~the unborn child~~  
 2 ~~by the unborn child's guardian ad litem. If the extension hearing involves an adult~~  
 3 ~~expectant mother of an unborn child under s. 48.133, the court shall notify the adult~~  
 4 ~~expectant mother, the unborn child through the unborn child's guardian ad litem, all~~  
 5 ~~the parties present at the original hearing, and the district attorney or corporation~~  
 6 ~~counsel in the county in which the dispositional order was entered, of the time and~~  
 7 ~~place of the hearing.~~

is amended

8 **SECTION 36.** 48.365 (2) of the statutes, ~~as affected by 2009 Wisconsin Act 94,~~  
 9 ~~section 104, and 2011 Wisconsin Act ... (this act), is repealed and recreated to read:~~

10 48.365 (2) No order may be extended without a hearing. The court shall  
 11 provide notice of the time and place of the hearing to the child, the child's parent,  
 12 guardian, legal custodian, and Indian custodian, all the parties present at the  
 13 original hearing, the child's foster parent or other physical custodian described in s.  
 14 48.62 (2), the child's court-appointed special advocate, the district attorney or  
 15 corporation counsel in the county in which the dispositional order was entered and,  
 16 if the child is an Indian child who is placed outside the home of his or her parent or  
 17 Indian custodian, the Indian child's tribe. If the child is an expectant mother of an  
 18 unborn child under s. 48.133, the court shall also notify ~~the unborn child by~~ the unborn child's guardian  
 19 ad litem. If the extension hearing involves an adult expectant mother of an unborn  
 20 child under s. 48.133, the court shall notify the adult expectant mother, ~~the unborn child through~~ the unborn  
 21 child's guardian ad litem, all the parties present at the original hearing, and the  
 22 district attorney or corporation counsel in the county in which the dispositional order  
 23 was entered, of the time and place of the hearing.

24 **SECTION 37.** 48.396 (1b) of the statutes is amended to read:

RWF

Fix component

auto ref B

the unborn child by ← STRIKE

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1           48.396 (1b) If requested by the parent, guardian, or legal custodian of a child  
2 who is the subject of a law enforcement officer's report, or if requested by the child,  
3 if 14 years of age or over, a law enforcement agency may, subject to official agency  
4 policy, provide to the parent, guardian, legal custodian, or child a copy of that report.  
5 If requested by the parent, guardian, or legal custodian of a child expectant mother  
6 of an unborn child who is the subject of a law enforcement officer's report, if requested  
7 by an expectant mother of an unborn child who is the subject of a law enforcement  
8 officer's report, if 14 years of age or over, or if requested by an ~~unborn child through~~  
9 ~~the~~ unborn child's guardian ad litem, a law enforcement agency may, subject to  
10 official agency policy, provide to the parent, guardian, legal custodian, expectant  
11 mother or ~~unborn child by the~~ unborn child's guardian ad litem a copy of that report.

12           **SECTION 38.** 48.396 (1d) of the statutes is amended to read:

13           48.396 (1d) Upon the written permission of the parent, guardian, or legal  
14 custodian of a child who is the subject of a law enforcement officer's report or upon  
15 the written permission of the child, if 14 years of age or over, a law enforcement  
16 agency may, subject to official agency policy, make available to the person named in  
17 the permission any reports specifically identified by the parent, guardian, legal  
18 custodian or child in the written permission. Upon the written permission of the  
19 parent, guardian, or legal custodian of a child expectant mother of an unborn child  
20 who is the subject of a law enforcement officer's report, or of an expectant mother of  
21 an unborn child who is the subject of a law enforcement officer's report, if 14 years  
22 of age or over, and of ~~the unborn child by the~~ unborn child's guardian ad litem, a law  
23 enforcement agency may, subject to official agency policy, make available to the  
24 person named in the permission any reports specifically identified by the parent,

1 guardian, legal custodian or expectant mother, and ~~unborn child by the~~ unborn  
2 child's guardian ad litem in the written permission.

3 SECTION 39. 48.396 (2) (aj) of the statutes is amended to read:

4 48.396 (2) (aj) Upon request of the parent, guardian, or legal custodian of a  
5 child expectant mother of an unborn child who is the subject of a record of a court  
6 specified in par. (a), upon request of an expectant mother of an unborn child who is  
7 the subject of a record of a court specified in par. (a), if 14 years of age or over, or upon  
8 request of an ~~unborn child by the~~ unborn child's guardian ad litem, the court shall  
9 open for inspection by the parent, guardian, legal custodian, expectant mother, or  
10 ~~unborn child by the~~ unborn child's guardian ad litem the records of the court relating  
11 to that expectant mother, unless the court finds, after due notice and hearing, that  
12 inspection of those records by the parent, guardian, legal custodian, expectant  
13 mother, or ~~unborn child by the~~ unborn child's guardian ad litem would result in  
14 imminent danger to anyone. *Auto ref D*

15 SECTION 40. 48.396 (2) (ap) of the statutes is amended to read:

16 48.396 (2) (ap) Upon the written permission of the parent, guardian, or legal  
17 custodian of a child expectant mother of an unborn child who is the subject of a record  
18 of a court specified in par. (a), or of an expectant mother of an unborn child who is  
19 the subject of a record of a court specified in par. (a), if 14 years of age or over, and  
20 of ~~the unborn child by the~~ unborn child's guardian ad litem, the court shall open for  
21 inspection by the person named in the permission any records specifically identified  
22 by the parent, guardian, legal custodian, or expectant mother, and ~~unborn child by~~  
23 ~~the~~ unborn child's guardian ad litem in the written permission, unless the court  
24 finds, after due notice and hearing, that inspection of those records by the person  
25 named in the permission would result in imminent danger to anyone.

1

SECTION 41. 48.396 (5) (b) of the statutes is amended to read:

Author of E

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48.396 (5) (b) The court shall notify the child, the child's counsel, the child's parents, appropriate law enforcement agencies, and, if the child is an expectant mother of an unborn child under s. 48.133, ~~the unborn child~~ by the unborn child's guardian ad litem, or shall notify the adult expectant mother, ~~the unborn child~~ by the unborn child's guardian ad litem, and appropriate law enforcement agencies, in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

9

SECTION 42. 48.46 (1) of the statutes is amended to read:

Author of F

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48.46 (1) Except as provided in subs. (1m), (2), and (3), the child whose status is adjudicated by the court, the parent, guardian, or legal custodian of that child, the guardian ad litem of an unborn child whose status is adjudicated by the court, or the expectant mother of that unborn child may at any time within one year after the entering of the court's order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing.

Insect  
23-17

18

SECTION 43. 48.78 (2) (aj) of the statutes is amended to read:

Author of G

19

48.78 (2) (aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an ~~unborn child~~ by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother, or ~~unborn child~~ by the unborn child's guardian ad

Keep, don't delete

1 litem, unless the agency determines that inspection of the record by the parent,  
2 guardian, legal custodian, expectant mother, or ~~unborn child by the~~ unborn child's  
3 guardian ad litem would result in imminent danger to anyone.

4 **SECTION 43. 48.78 (2) (ap)** of the statutes is amended to read:

5 48.78 (2) (ap) Paragraph (a) does not prohibit an agency from making available  
6 for inspection or disclosing the contents of a record, upon the written permission of  
7 the parent, guardian, or legal custodian of a child expectant mother of an unborn  
8 child who is the subject of the record, or of an expectant mother of an unborn child  
9 who is the subject of the record, if 14 years of age or over, and of ~~the unborn child by~~  
10 the unborn child's guardian ad litem, to the person named in the permission if the  
11 parent, guardian, legal custodian, or expectant mother, and ~~unborn child by the~~  
12 unborn child's guardian ad litem, specifically identify the record in the written  
13 permission, unless the agency determines that inspection of the record by the person  
14 named in the permission would result in imminent danger to anyone.

13  
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15 **SECTION 45. Effective dates.** This act takes effect on the day after publication,  
16 except as follows:

17 (1) ~~TREATMENT FOSTER HOMES. The repeal and recreation of sections 48.27 (3)~~  
18 ~~(a) 1., 48.357 (1) (am) 1. and (2m) (b), 48.363 (1) (b), and 48.365 (2) of the statutes~~  
19 ~~takes effect on the day after publication or on the date stated in the notice provided~~  
20 ~~by the secretary of children and families and published in the Wisconsin~~  
21 ~~Administrative Register under section 48.62 (9) of the statutes, whichever is later.~~

22 (END)



INSERT JLD

NO  
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d. ~~s. 48.62~~ 48.357(1)(am)1.

① If the proposed change in placement involves any change in placement other than a change in placement specified in par. (c), the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall cause written notice of the proposed change in placement to be sent to the child, the parent, guardian, and legal custodian of the child, any foster parent or other physical custodian described in s. 48.62 (2) of the child, the child's court-appointed special advocate, and, if the child is an Indian child who has been removed from the home of his or her parent or Indian custodian, the Indian child's Indian custodian and tribe. If the child is the expectant mother of an unborn child under s. 48.133, written notice shall also be sent to ~~the unborn child by~~ the unborn child's guardian ad litem. If the change in placement involves an adult expectant mother of an unborn child under s. 48.133, written notice shall be sent to the adult expectant mother and ~~the unborn child by~~ the unborn child's guardian ad litem. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

(end ins JLD)

Insert 24-14

SECTIONS 1 to 42 modify provisions of the Children's Code relating to actions relating to an unborn child who is alleged to be in need of protection or services so that notice must be given to and rights must be exercised by the unborn child's guardian ad litem instead of the unborn child through the unborn child's guardian ad litem.

~~SECTION 43~~ law enforcement, juvenile court, and  that agency records governed by the Children's Code may be released to certain persons upon the request of an unborn child's guardian ad litem instead of upon the request of the unborn child by the unborn child's guardian ad litem.

Fix font size

or with the permission

note: std

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NOTE:

SECTIONS

37 to 40, 43, and 44 provide

(edit out)

CS → NOTE:

Insert 23-17

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proceedings in which

SECTIONS 1 to 4 modify provisions of the Children's Code relating to ~~proceedings~~ an unborn child who is alleged to be in need of protection or services so that notice must be given to and rights must be exercised by the unborn child's guardian ad litem instead of the unborn child through the unborn child's guardian ad litem.

Notices

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Insert after SECTION 43  
Provides that agency records governed by the Children's Code may be released to certain persons upon the request of an unborn child's guardian ad litem instead of upon the request of the unborn child by the unborn child's guardian ad litem.

(end of insert 23-17)  
Guardian ad litem

number

auto ref B  
36

Auto ref A, 1 to B, 41, and 42, Auto ref E, auto ref F

**Kahler, Pam**

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**From:** Sappenfield, Anne  
**Sent:** Monday, February 06, 2012 8:54 AM  
**To:** Malaise, Gordon; Kahler, Pam  
**Cc:** Young, Tracey  
**Subject:** DCF remedial legislation

Hi Pam & Gordon,

The Law Revision Committee voted to introduce the following DCF drafts: 0558/1, 0559/1, 0560/1, 0563/1, 0568/1, and 0569/1. Could you please combine these into one draft?

Thank you,  
Anne

*Anne Sappenfield*  
Senior Staff Attorney  
WI Legislative Council  
(608) 267-9485